

BUREAU OF AUTOMOTIVE REPAIR

ADDENDUM TO THE

FINAL STATEMENT OF REASONS

Hearing Dates: October 30, 2002

Subject Matter of
Proposed Regulations: Definitions, "Clean Piping"

Section Affected: § 3340.1, Title 16, Division 33, Chapter 1, Article 5.5, California Code of Regulations

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

Section 44072.10 of the Health and Safety Code provides, in pertinent part, that the department shall revoke the license of any smog check station licensee or smog check technician who fraudulently certifies or participates in the fraudulent certification of vehicles. This section also specifies that fraudulent certification includes "clean piping, as defined by the department." While the term "clean piping" is a commonly used term, there is no formal definition of the term in statute or regulation, and Section 44072.10(c)(1) has been interpreted to require the Bureau to formally define the term.

The definition of the term "clean piping" set forth in this proposed action has been condensed by the Bureau from descriptions used in Accusations drafted by deputy attorneys general in formal administrative disciplinary actions. Based on the Bureau's extensive experience in investigating and analyzing cases involving the fraudulent issuance of certificates of compliance through "clean piping," the proposed definition was written to encompass the basic elements common to every act of "clean piping." The vehicle being certified may or may not be tested; it may not even have been present at the Smog Check Station at the time the certificate of compliance was issued. However, in every such instance the emissions from one vehicle are used to cause a certificate of compliance to be issued by an emissions analyzer for another vehicle.

The emissions analyzer is a machine and cannot independently differentiate between vehicles being tested. Vehicle identification information is entered into the analyzer's computer manually by a technician. The emissions sample probe is placed in the tailpipe of a vehicle to obtain an exhaust emission sample. The analyzer does not know if the

emission sample is coming from the vehicle for which identifying information was entered into the computer. The analyzer does not even know if that identified vehicle is present. All the analyzer knows to do is to issue a certificate of compliance to the identified vehicle if the emissions samples fed to it measure within the allowable limits.